

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEB 12 2004

Federal Communication Commission  
Bureau / Office

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Cheyenne, Wyoming)

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FEB 23 2004

Federal Communications Commission  
Office of the Secretary

TO: Chief, Allocations Branch

**PETITION TO DISMISS PETITION FOR RECONSIDERATION**

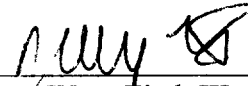
Mountain States Radio, Inc. ("MSR") files this Petition to Dismiss its Petition for Reconsideration filed on June 24, 2002. A copy of the Petition for Reconsideration is attached. MSR has no further interest in prosecuting the Petition for Reconsideration.

MSR has received no consideration for this requested dismissal.

Respectfully submitted,

**MOUNTAIN STATES RADIO, INC.**

**GAMMON & GRANGE, P.C.**  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
(703) 761-5000

By   
A. Wray Fitch III  
Its Counsel

February 12, 2004

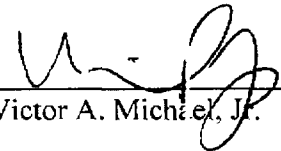
[K:\0524\Petition to Dismiss Petition for Recon awf]

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# DECLARATION

I, Victor A. Michael, Jr., hereby declare under penalty of perjury that:

1. I am President of Mountain States Radio, Inc.
2. Neither Mountain States Radio, Inc. nor any of its principals have been paid or promised any consideration for dismissal of its Petition for Reconsideration.

  
\_\_\_\_\_  
Victor A. Michael, Jr.

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

**FILE COPY**

**STAMP & RETURN**

**In the Matter of**

**Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Cheyenne, Wyoming)**

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**RECEIVED**

**JUN 24 2002**

**TO: Chief, Allocations Branch**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION FOR RECONSIDERATION**

Mountain States Radio, Inc. ("MSR") files this Petition for Reconsideration pursuant to Rule 1.106 of the Commission's Letter Action dated May 23, 2002 dismissing the Petition for Rulemaking filed by MSR on February 22, 2002. MSR believes the Commission erred in dismissing the MSR Petition for Rulemaking.

MSR, the licensee of KZCY(FM), Channel 285A, licensed to Cheyenne, Wyoming, requested the substitution of Channel 280A for Channel 285A at Cheyenne, Wyoming. To accommodate the upgrade, MSR also requested the substitution of Channel 285C2 for vacant but unapplied for Channel 280C2 at Cheyenne, Wyoming. The Commission dismissed the rulemaking for MSR's failure to demonstrate, as required for a nonadjacent upgrade, to either: (1) demonstrate the availability of an additional equivalent class channel for other expressions of interest; or (2) to demonstrate, pursuant to Section 1.420(g)(3) that the proposal would constitute an incompatible channel swap.

MSR respectfully requests that the Commission reconsider its dismissal. In the event there is no expression of interest by another party for Channel 280C1, other than by MSR, there would be no need for an equivalent channel, and the public interest would clearly be benefitted by the improved service offered by Channel 280C1. It is true that in the event there is another expression of interest for Channel 280C1, MSR has no intention of placing its authorization in jeopardy and subject to other

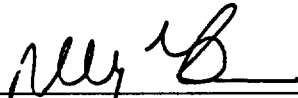
applicants. MSR believes that Commission precedent allows a petitioner the option to withdraw its rulemaking proposal in the event there is another expression of interest which would in any way jeopardize its authorization. *Modification of FM and TV Licenses*, 98 FCC 2d 916 at ¶9 (1984).

MSR, therefore, requests that the Commission institute a notice of proposed rulemaking with the express proviso that in the event there is a competing expression of interest that MSR shall have the right to withdraw and dismiss the rulemaking petition *status quo ante*. Although it is possible there may in fact be another expression of interest, it is also likely there will be none, thereby advancing the Commission's statutory mandate under 307(b) of the Communications Act.<sup>1</sup>

Respectfully submitted,

**MOUNTAIN STATES RADIO, INC.**

**GAMMON & GRANGE, P.C.**  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
(703) 761-5000

By   
A. Wray/Fitch III  
Its Counsel

June 24, 2002

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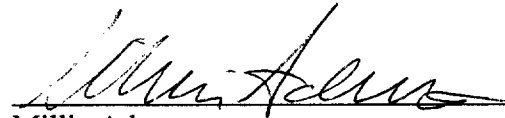
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<sup>1</sup> In the event the Commission determines that MSR does not have the right to terminate the rulemaking to protect its present authorization from competing applications should another expression of interest be filed, MSR has no interest in pursuing the rulemaking.

**CERTIFICATE OF SERVICE**

I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 12th day of February, 2004, by first-class, postage prepaid, U.S. Mail, copies of the foregoing PETITION TO DISMISS PETITION FOR RECONSIDERATION to the following

Mr. John A. Karousos  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-A266  
Washington, D.C. 20554

  
Millie Adams